

**BEFORE**

**THE PUBLIC SERVICE COMMISSION**

**OF SOUTH CAROLINA**

**DOCKET NO. 2019-281-S**

<b>IN RE:</b>	)	<b>RESPONSE OF INTERVENOR LISA</b>
	)	<b>LEVINE TO PETITIONER PALMETTO</b>
Application of Palmetto Utilities, Inc. for	)	<b>UTILITIES , INC. MOTION TO</b>
adjustment of rates and charges for,	)	<b>DISMISS INTERVENTION OF LISA</b>
and modification to certain terms and	)	<b>LEVINE OR TO STRIKE HER PRE-</b>
conditions related to the provisions	)	<b>HEARING BRIEF AS AMENDED</b>
of sewer service.	)	<b>AND TO PROHIBIT HER FROM</b>
	)	<b>TESTIFYING BEFORE THE</b>
	)	<b>COMMISSION</b>

Intervenor Lisa Levine (Intervenor) hereby requests the Commission to deny the Motion of Petitioner Palmetto Utilities, Inc. (PUI) to dismiss her as Intervenor, to strike her Pre-Hearing Brief, as amended, and to prohibit her from testifying and presenting evidence before the Commission. In this regard, Intervenor avers and notes she did not file or request to be filed written testimony before the Commission but rather a Pre-Hearing Brief. She is a *pro se* Intervenor and avers that she has followed the Commission's guidelines as such while participating in the Pre-Hearing Discovery and Actions.

Intervenor further avers that on January 16, 2020, she requested the Clerk for the Commission to note that she might want to testify and present evidence at the hearing (see page 3, [Petition to Intervene](#)). In the event that the Commission should

grant PUIs Motion to remove her as Intervenor in this matter, she requests she be permitted to testify at the Commission hearing on the matter. Her request to the Clerk should satisfy the requirement to do so as it was made well within the time lines for such a request. Intervenor understands that otherwise, due to her not filing direct testimony, and instead filing the Pre-Hearing brief, the object of PUIs Motion and this Response she is not permitted to provide testimony at the hearing. Intervenor understands that her Pre-Hearing Brief is in lieu of direct testimony.

Intervenor avers that Commission Order No. 2020-33H is inapposite to the filing of a Pre-Hearing Brief as that Order relates only to the provision of pre-filed testimony as well as proposed and final orders. Notwithstanding allegations of her failure to meet deadlines, even if the Commission should conclude that she did not abide by the Hearing Officer's deadline, PUI has failed to show any prejudice whatsoever in receiving her Pre-Hearing brief and its amendments by June 1, 2020. PUI cannot seriously contend that such a slight delay somehow makes it less able to adequately review her brief or in any other way causes it to suffer prejudice. PUI in fact spent considerable time and effort in examining her brief and commenting on so it is clear the only prejudice it might have would be that the Commission might see and consider Intervenor's objections to PUIs requests. Under Rule 37, South Carolina Rules of Civil Procedure, an order denying a party the right to submit testimony "may be made only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party". *Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996). PUI has neither alleged nor shown that Intervenor's delay of a few days for her amendment that has questionable applicability to a pre-hearing brief was willful or grossly indifferent.

Accordingly, PUIs Motion should be denied in this respect and Intervenor suggests that to economize time the Commission limit PUI to no further comment on Intervenor's Brief than it already has.

Intervenor does not intend to file testimony as she is *pro se* and does not intend to call upon any witnesses other than herself to provide comments at the Hearing. The first part of S.C. Code Regs.103-845.C reads as follows:

"Prepared Statements and Exhibits. A witness may read into the record, as his direct testimony, statements of fact or expressions of his opinion prepared by him, or written answers to interrogatories of counsel. A prepared statement of a witness may also be received as an exhibit. All parties of record, insofar as it is practicable, should prefile with all other parties of record copies of prepared testimony and exhibits which the party of record proposes to use during a hearing."

Note that 103-845 C states "all parties of record, *as far as practicable, should prefile*". Emphasis added. Section 845 B restricts cumulative testimony. Intervenor does not desire to provide in person testimony but rather seeks to rely on the points raised in her brief. Obviously, as mentioned above, if the Commission removes her as an Intervenor in this matter she desires to testify and present evidence. Her reference to Order 2020-33H in her pre-brief is an attempt to fit her brief within the general guidelines of pre-hearing action. Intervenor notes the schedule for this proceeding has been changed several times, at least once at the request of PUI. Order 2020-33H does not mention Pre-Hearing briefs. The Commission rejected the Parties first attempt at a schedule at which time it directed the Hearing Officer to work with and develop a schedule with which the parties had to comply. At no time during the Hearing officer's attempt to garner new time lines did he ask about pre-hearing actions other than

testimony. He did not consider pre-hearing briefs nor did Intervenor consider it her responsibility to decide what she would do at that time. Regarding the filing of briefs, PUI had already filed for and provided an *ex parte* pre-hearing briefing. Intervenor knows of any time limitations for it to have done so. Such an omission by the Hearing Officer to cover all pre-hearing matters should not be a reason for rejection of the brief especially when the Commission itself rejected the initial limitations for the parties to file. Intervenor understands she may ask questions at the Hearing and that should her Pre-Hearing Brief be accepted, as filed and amended, the Commission will consider the arguments she has presented in her brief.

Rule 103-828 speaks to amendments to a pleading and Intervenor requests the proposed amendments to her Brief be accepted. They are little more than change in form. S.C. Code Reg. 103-828 states an applicant like PUI could move to strike the amendments “for good cause.” PUIs “good cause” is that the amendments would extend the pre-filing testimony dates to her Intervenor’s benefit and PUIs detriment but it fails to state what that detriment might be. PUI requests, while carefully examining and commenting on Intervenor’s brief, that the amendments within just a few days of the basically inapplicable limitation periods for testimony are to its detriment. The General Assembly in its adoption of the S.C. Regs specifically has authorized the Commission to adopt the amendment as an amendment to a pleading under S.C. Reg. 103-828. PUI failed to present any “good cause” to support its motion.

PUI argues that briefs are not allowed before the Hearing, only after. This would be a perversion of procedural provisions guiding fairness in contested judicial and

administrative proceedings. PUI is mistaken in this regard. The provisions PUI relies on in its Motion to Dismiss Intervenor do not mention briefs. Rule 16 (c) of the South Carolina Rules of Civil Procedure specifically provides for pre-trial briefs. The Note to the 1993 Amendment following Rule 16 in the South Carolina Civil Rules of procedure states a pre-trial brief does not restrict a party in the presentation of its case. Hearing Officer David Butler acted and denied a previous Motion to Dismiss and Strike a Pre-Hearing Brief before the SC Public Service Commission. He stated in *Docket No. 2017-370-E, 2017-207-E, 2017-305-E*, Paragraph 2 of Order No. 2018-160 H, “The Motion to Dismiss and Strike the Pre-Hearing Brief of the South Carolina Public Service Authority is denied. A pre-hearing brief does not constitute pre-filed testimony, nor does its content constitute evidence in the case. A pre-hearing brief is tantamount to an argument or statement of counsel. Accordingly, the Motion to Dismiss and Strike is denied.” Furthermore, S.C. Code Regs. 103-818 C. (3) states, “The Commission shall provide an opportunity to interested parties for participation in the rule-making proceeding through submission of written data, views or arguments with or without opportunity for oral presentation.” Intervenor’s Pre-Hearing brief is a submission of her views and arguments and an opportunity to participate in the rule-making proceeding.

Without wasting the Commission’s time to rebut or further argue this matter, Intervenor points out that her credentials have been provided to the Commission in her Petition to Intervene. She has a Bachelors degree in engineering from Columbia University, a Masters in Public Health from the Columbia University School of Public Health, and was certified in industrial hygiene during her career. PUIs allegation of her use of hearsay fails to appreciate that her comments relate to its own basis for rate

adjustment. See the Exhibit in the March 10, 2020 testimony of Joel Wood. Issues of fiduciary connection between Intervenor and PUI are unnecessary to this Response. Intervenor is a customer and pays a set fee regularly and expects a service accordingly. PUIs approval to provide the service for which she pays is contractual and the service contracted for begets responsibility based on payments.

ACCORDINGLY, Intervenor requests the Commission to deny PUIs Motion in its entirety and for such other and further relief that the Commission may consider as just and lawful.

Respectfully Submitted,

(s) Lisa Levine

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